

7 Official Opinions of the Compliance Board 140 (2011)

Minutes – Closed Session Statement – Practices in violation

REVISED

April 21, 2011

Complainant:

*Craig O'Donnell
Kent County News*

Respondent:

Maryland Transportation Authority

The Open Meetings Compliance Board has considered the complaint of Craig O'Donnell ("Complainant") that the Maryland Transportation Authority ("Authority") violated the Open Meetings Act ("Act") by omitting from its minutes of an open session a description of the topics discussed in a prior closed session.

The Authority agrees with Complainant: the minutes of its January 27, 2011 open meeting did not state the topics that were discussed in the closed meeting held that day.¹ The open session minutes state merely that "the members unanimously voted to move into Closed Session pursuant to Section 10-508(a)(12) of the State Government Article ... to discuss an investigative proceeding on actual or possible criminal conduct." Section 10-509(c)(2) of the State Government Article ("SG") requires public bodies which have met in closed session to include in the minutes for their next open session "a listing of the topics of discussion, persons present, and each action taken during the session." We have "repeatedly noted that the mere parroting of the statutory exception is not acceptable." 4 *OMCB Opinions* 38, 41 (2004). The Authority thus violated the Act by omitting from its minutes the content required by §10-509(c)(2), and it has since corrected them.

The Authority states that its omission (and hence violation of the Act) was inadvertent and that it posted its closing statement on its website. The closing statement provisions of the Act appear in SG §10-508 and are distinct from the minutes provisions set forth in SG §10-509. *See 3 OMCB Opinions* 173, 178 (2002)(explaining the Act's "three distinct public disclosure mandates in connection [with] a closed meeting"). The topic description in the January 27, 2011 closing statement goes well beyond "mere boilerplate" and thus complies with SG §10-508(d)(2). It reads:

¹ This opinion replaces an earlier opinion, in which we mistook the concession made by the Authority.

The meeting will be closed under [SG §10-508(a)(12)] to permit the MDTA Chief Police officer to discuss an ongoing criminal investigation resulting from package incidents at the Maryland Department of Transportation headquarters and other locations.

We find that while the Authority's closing statement complied with the Act, its minutes did not.

OPEN MEETINGS COMPLIANCE BOARD

Elizabeth L. Nilson, Esquire

Courtney J. McKeldin

Julio A. Morales, Esquire